IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

Crl.MC.No. 3550 of 2006()

CC.476/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II, HOSDRUG, KASARAGOD

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PETITIONER: ACCUSED:

RAVEENDRAN, S/O.MANIKYAM, AGED 45,
RESIDING AT KIZHEKKUMKARA,
AJANNUR VILLAGE, KASARAGODE DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.R.SURAJ KUMAR
SMT.GEETHA P.MENON

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
NEELESWAR POLICE STATION, KASARAGOD DISTRICT.

3. THE ASSISTANT SUB INSPECTOR OF POLICE,
NEELESWAR POLICE STATION, KASARAGOD DISTRICT.

4. V. KUNHAMBU, S/O.KUNHAMBU,
AGED 49, ADUKKATHUPARAMBU, MADIKKAI VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY PUBLIC PROSECUTOR SRI.KAMAPPU
SRI.T.B.SHAJIMON

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3550 OF 2006

Dated this the 19th day of December, 2006.

ORDER

The petitioner is the only accused in a prosecution under Section 435 and 447 I.P.C. Proceedings were initiated on the basis of a private complaint filed by the 4th respondent herein. The said complaint was referred to the police under Section 156 (3) Cr.P.C. After investigation, the police filed the final report alleging commission of offences punishable under Sections 447 & 435 I.P.C. Cognizance has been taken by the learned Magistrate. The petitioner has rushed to this Court without and before appearing before the learned Magistrate. The petitioner prays that invoking the powers under Section 482 Cr.P.C proceedings may be quashed.

2. What are the reasons ? The main plank of attack is that in Annexure-A private complaint, which was referred to the police and on the basis of which the F.I.R was registered, the date of offence is shown as 26.04.2005 and that on that date, the petitioner was not available in India at all. It is submitted that in these circumstances, the very foundation of the complaint/charge cannot survive.

3. It is further contended that the allegations are totally false and that it is a counter blast against the petitioner for another proceedings, which has been initiated by the deceased mother of the petitioner.

4. Truth or falsity of the allegation cannot certainly be considered and resolved in proceedings under Section 482 Cr.P.C. The contention, that the allegations are false, cannot in these circumstances, justify the invocation of the powers under Section 482 Cr.P.C in this case.

5. The final report clearly shows that the alleged incident occurred on 26.04.2006 and not 26.04.2005 as shown in Annexure-A. The learned counsel for the respondent/complainant submits that there is no substance or merit in the contention and the typographical error which had crept into the complaint filed by the respondent, cannot, at any rate, justify the invocation of the powers under Section 482 Cr.P.C.

6. The learned counsel for the petitioner further submits that no ingredients of the offence punishable under Section 447 I.P.C are shown to exist in the facts and circumstances of this case.

7. I am of opinion that detailed reference to facts on the disputed factual aspects is not necessary in this order and it is for the petitioner to appear before the learned Magistrate and raise all relevant and appropriate contentions before the learned Magistrate in his attempt to claim discharge/acquittal.

8. The learned counsel for the petitioner submits that a non bailable warrant of arrest has been issued by the learned Magistrate. The petitioner apprehends that if he appears before the learned Magistrate and applies for bail, his application for bail may not be considered by the learned Magistrate expeditiously and on merits. He prays that directions may be issued to the learned Magistrate to release the petitioner on bail.

9. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

10. In the result, this Crl.M.C is dismissed. But with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

R.BASANT
JUDGE

rtr/